



**Testimony For The House Committee on Natural Resources  
Subcommittee on Federal Lands  
Regarding  
The Antiquities Act**

May 2, 2017

The Association of O&C Counties (AOCC) represents 17 Counties in Western Oregon that have a statutory interest in 2.1 million acres managed pursuant to the O&C Act of 1937, 43 USC 1181a-f. AOCC appreciates the inquiry of this Subcommittee regarding impacts of designation of national monuments under authority of The Antiquities Act of 1906, 16 U.S.C §§431-433. A recent example of overreaching under alleged authority of the Antiquities Act occurred within AOCC's member Counties when President Obama greatly expanded the Cascade Siskiyou National Monument (CSNM) in Oregon.

The expansion of the CSNM occurred on January 12, 2017. This eleventh-hour action in the last days of the last administration added about 43,000 acres in Oregon to the CSNM. An additional 5,000 acres are in California. About 31,000 of the expansion acres are located in Jackson County, Oregon, and about 12,000 acres are within Klamath County, Oregon; both Counties are members of AOCC. Approximately 40,400 acres within the expansion area are "O&C Lands" and therefore are subject to management under the O&C Act.

There was no opportunity for the public to speak on the proposed expansion until October of 2016, and by then it was already clear the administration was committed to granting the request of environmental organizations to expand the CSNM. When afforded an opportunity, AOCC actively opposed the monument expansion of the CSNM and in particular AOCC opposed inclusion of any O&C Lands in any national monument. Jackson and Klamath Counties did the same, as did hundreds of private individuals and groups.

Local concerns were ignored. Worse yet, the law was ignored. Commercial timber harvesting is specifically forbidden within the CSNM, a prohibition that is directly contrary to the mandate of Congress for management of O&C Lands.

For a history of the unique O&C Lands, please visit the AOCC website: <http://www.oandc.org/o-c-lands/history-of-o-c-lands/>. In 1937, the O&C Lands were specifically designated by Congress for sustained-yield timber production. Any of the O&C Lands classified as timberlands

“\* \* \* shall be managed \* \* \* for permanent forest production, and the timber thereon shall be sold, cut and removed in conformity with the principal [sic] of sustained yield for the purpose of providing a permanent source of timber supply, protecting watersheds, regulating stream flow, and contributing to the economic stability of local communities and industries, and providing recreational facilities \* \* \*.” 43 USC §1181a.

The O&C Act goes on to require that “timber from said lands in an amount not less than one-half billion feet board measure, or not less than the annual sustained-yield capacity when the same has been determined and declared, shall be sold annually \* \* \*.” 43 USC §1181a. The O&C Lands have a dominant use---timber production---that has been recognized many times by the federal courts. See, for example, Headwaters, Inc. v. BLM, Medford Dist., 914 F2d 1174, 1183-84 (9<sup>th</sup> Cir. 1990).

Because the CSNM designation ignores the pre-existing reservation of the O&C Lands for timber production, and actually prohibits timber production, AOCC had no choice but to initiate litigation by filing its complaint in the District Court for the District of Columbia. A copy of the complaint is posted on the AOCC's website:

[http://www.oandc.org/wp-content/uploads/001\\_Complaint-Civil-Cover-Sheet-Summons-x5.pdf.pdf](http://www.oandc.org/wp-content/uploads/001_Complaint-Civil-Cover-Sheet-Summons-x5.pdf.pdf)

Perhaps the most frustrating aspect of the decision to expand the CSNM is that the Department of the Interior determined in 1941 that national monuments may not be designated on O&C Lands. According to the Solicitor for the Department of the Interior, the President lacks authority under the Antiquities Act to include O&C lands in a national monument. In Solicitors Opinion M. 30506, the Solicitor responded to a question from the Secretary of the Interior regarding a proposal to include O&C lands in an expansion of the Oregon Caves National Monument. The Solicitor advised that the President had no such authority:

"My Dear Mr. Secretary: My opinion has been requested as to whether the President is authorized to set apart certain [O. & C.] lands as an addition to the Oregon Caves National Monument. It is my opinion that the President does not have such authority.

\* \* \*

By the act of August 28, 1937 (50 Stat 874), Congress directed that certain of the lands (those heretofore or hereafter classified as timber lands and power-site lands valuable for timber) be managed "for permanent forest production and the timber thereon shall be sold, cut and removed in conformity with the principle of sustained yield." \* \* \*

While the lands proposed to be added to the Oregon Caves National Monument have not yet been classified formally, I am advised by the Chief Forester, O. & C. Administration, that they are in fact timberlands.

It is clear from the foregoing that Congress has specifically provided a plan of utilization of the Oregon and California Railroad Company revested lands. \* \* \* It must be concluded that Congress has set aside the lands for the specified purposes.

\* \* \*

There can be no doubt that the administration of the lands for national monument purposes would be inconsistent with the utilization of the O. & C. lands as directed by Congress. It is well settled that where Congress has set aside lands for a specific purpose the President is without authority to reserve the lands for another purpose inconsistent with that specified by Congress." DOI Solicitor's Opinion M. 30506, March 9, 1940.

The vast majority of O&C Lands included within the CSNM expansion are classified as timberlands and therefore beyond the President's authority under the Antiquities Act.

Numerous judicial decisions have made clear that O&C Lands are dedicated to sustained yield timber production in order to generate revenue for the O&C Counties and to provide an economic base for local industries and communities. Pursuant to 43 U.S.C 1181f, the O&C Counties share 50 percent of the total revenues generated from timber harvests on O&C Lands. Counties depend on shared timber receipts to pay for essential public services of all kinds, from public safety such as sheriff patrols and jails to public health programs and libraries. When O&C lands are withdrawn from sustained yield management, there is a direct financial loss to County governments and a loss of services to local citizens.

The O&C Counties are already reeling from two decades of federal mismanagement of the O&C lands and a reduction of almost 90 percent in revenues from shared timber harvest receipts. Counties struggle to provide even minimally acceptable levels of public services. It can only be described as indifference or even arrogance to add to these woes by Presidential actions taken under the Antiquities Act.

In August, 2016, the BLM adopted a new resource management plan (RMP) for the O&C lands. The 2016 RMP is currently being litigated by AOCC and others. The land use allocations in the RMP are illegal, in that the majority of the O&C lands are allocated to reserves in which sustained yield management is not allowed. The 2016 RMP left precious little in the BLM's harvest land base (HLB), which is the acreage outside of reserves on which the BLM plans to manage for sustained yield timber production. The CSNM expansion made the situation worse.

The CSNM expansion cut deeply into the already-too-small HLB. The illegally restricted HLB in the BLM's 2016 RMP is further reduced by an additional 17,000 acres in the BLM's Medford and Lakeview Districts by the CSNM expansion. This represents a substantial loss of shared timber receipts for all the O&C Counties, since timber receipts generated anywhere on O&C Lands are shared by all the O&C Counties.

The loss of active management on 17,000 acres is also a major blow to local economies for communities in Klamath and Jackson Counties, and perhaps as far away as Douglas County, which has mills that are within hauling distance of harvests that, but for the CSNM, would have taken place. Klamath Falls is likely to be the hardest hit, as the BLM's Klamath Resource Area office is likely to close for lack of timber to manage, and those federal jobs will probably be moved or eliminated, on top of the loss of private sector employment.

AOCC is not categorically opposed to all monument designations under the Antiquities Act. At some point, however, the authority of the President should be constrained by local interests. National monuments are forbidden on O&C Lands, but for lands otherwise eligible for inclusion in national monument, when a proposed monument reaches a certain size, local governments such as Counties should have an elevated role, perhaps even a veto.

Thank you for the opportunity to comment on this important issue.

ASSOCIATION OF O&C COUNTIES

  
Commissioner Tim Freeman, President *Bj K90*